

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4951 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JADHAOBHAI I PATEL

Versus

STATE OF GUJARAT & ORS.

Appearance:

MR NK MAJMUDAR for Petitioner

MR MUKESH PATEL for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10/09/96

ORAL JUDGMENT

Heard learned counsel for the parties. The petitioner, a Primary School teacher filed this petition before this Court against the action of the respondents not to give him the pension, gratuity and other retirementary benefits though he served for more than 40 years.

2. The facts which are necessary for disposal of this writ petition, are to be taken briefly. The petitioner entered in the services of District Jilla Parishad in July 1940 and he was posted in Gujarati Primary School at Anor. From June 1943, he was sent at Sorabji J.J. Training College, Surat for training at Government expenses. From 16th May 1945, the petitioner posted at Primary School, Nikora, where he had served upto 31st October 1945. The petitioner served for in all 5 years 3 months and 21 days in the Schools under the Board. During his tenure as a Primary teacher in the District School Board, the petitioner was enrolled under the C.P.F. Scheme from July 1942. On 1.11.45, the petitioner was appointed as Secondary teacher in K.M. Girls' School, Bharuch where he served till 30.6.46. From 1.7.46, the petitioner was appointed by Narbda High School, Shukla Tirth, Bharuch, as Secondary School teacher where he served till 11.6.61. Therefore in that School the petitioner served for about 14 years 11 months and 10 days as a permanent School teacher. From 12th June 1961, the petitioner has come in the School Vinay Vidya Mandir, Nikora, which is being run and managed by respondent No.4. He was there as a permanent Secondary School teacher. In the year 1961, the School was having only Secondary section. Thereafter in the year 1961, the respondent No.4 also started Primary section. The petitioner was physically handicapped as he was suffering from Leucoderma, because of which it was not possible for him to take P.T. classes outside in the open, and therefore he requested the authorities that he may be assigned indoor class work. The petitioner was posted, with effect from 1.8.70, in the Primary School run by the respondent No.4. He retired from the services in June 1980. In the year 1971, the Government has passed a resolution extending benefit of pension to the members of the staff of the non Government Secondary School with effect from 1.3.69 and the options were called for from the staff members within one month of the Resolution. The petitioner who was serving at the relevant time as secondary teacher has given his option for pension. The School management, the respondent No.4 thereafter sent his pension papers in the year 1975 treating the petitioner to be retired from the Secondary School from 31st June 1970, i.e. prior to his posting in the Primary section. In the month of August 1975, lumpsum amount of Rs.5,246/- was paid to the petitioner. The amount of pension for the period from 1970 to 1975 was determined at the rate of Rs.86/- p.m. The aforesaid amount was given by way of adhoc pension to the petitioner. Later on the District Education Officer informed the Headmaster of the School where the petitioner was serving that the

petitioner had not fulfilled the criteria and therefore he will not be entitled for pension and the pension papers were returned to the School accordingly. Letter of the D.E.O. dated 3.1.76 has been submitted by the petitioner as annexure 'B' to this petition. The adhoc amount of pension which has been received by the petitioner was directed to be refunded to the D.E.O. which comes out from the letter of the D.P. dated 20.12.76.

3. Later on it has been decided by the Government Circular that the services of the petitioner of the Old District Local Board should also be treated as continued for pension purposes. The petitioner, as stated earlier, had served for about 5 years under the District Local Board and as such the same has to be counted for qualifying the condition of continuation of services as per aforesaid Circular of the Government. The petitioner has obtained necessary certificate of his service in the District Local Board and same has been submitted to the Management of the School. The Management again submitted pension papers of the petitioner to the Government. The District Education Officer, under its letter dated 14.8.81 returned the pension papers of the petitioner on the ground that as per rule, the petitioner is not entitled for the pension. The petitioner thereafter approached to the Director of the Department. The pension papers were resubmitted by the Management of the School to the D.E.O. under the letter dated 9.3.83. The petitioner has come up with the case that the Department has not taken any decision on the pension papers submitted by the petitioner on 9.3.83.

4. A reply to the writ petition has been filed by the respondent and they have come up with the case that on 31st July 1970, the pensionable services of the petitioner was 24 years 9 months. The benefit of pension scheme has not been extended to the members of the staff working in the Primary non Government grant-in-aid institution. Reference has further been made that as per D.C.S.R., 161, the petitioner has not completed age of 58 years or pensionable service of 30 years on 31st July 1970 and hence he was not entitled for pension and gratuity. The respondents have admitted in the reply that under the Government Circular dated 28th June 1976, services rendered in the Primary School of the District School or Municipal School Board should be counted for the purposes of pension. It is further admitted that the services which have been rendered by the petitioner in District School Board, Bharuch, for the period from 10.7.1940 to 31.10.45 was countable for pensionable

service. The respondent has admitted that the pension case of the petitioner was resubmitted to the D.A.T. Ahmedabad for finalization. The pension case of the petitioner was rejected by D.A.T. Ahmedabad observing that the petitioner was not permitted for invalid retirement as per B.C.S.R. 201(b)4(c) and he has not produced any medical certificate of Civil Surgeon or the scheme for voluntary retirement was not existing to non-Government Secondary Schools on 31.7.70. The respondent further has come up with case that it is a case of resignation submitted by the petitioner from the services of Secondary School and he was taken in the Primary School afresh. There is no provision of protected Secondary teacher. The respondent has also not disputed that subsequently a scheme has also been introduced for voluntary retirement for teachers of non Government Secondary Schools. The respondent has concluded its reply stating that taking into consideration the service from D.S.B. Broach the total service comes to 30 years, 21 days. This service can be counted for pension purpose as per B.C.S.R. 161. But the petitioner has resigned on 31.7.70 and joined Primary School service and served there for 10 years. The service of Primary School cannot be counted for pension purposes.

5. The learned counsel for the petitioner contended that the whole approach of the respondents is arbitrary. The learned counsel for the petitioner contended that even if the services rendered by the petitioner in the Primary section of the School run by respondent No.4 is excluded, then too, admittedly he had, on 21st July 1970, more than 30 years total service to his credit as a Secondary teacher of non Government institution and as such he was entitled for pension. The learned counsel for the petitioner further urged that in the matter of grant of pension the respondent should have made endeavour to give pension to the petitioner and not proceed technically to deprive the pension. There is no document produced on record that the petitioner has resigned from services of Secondary School. On the contrary, the petitioner's counsel contended that because of his physical inability, he has shifted to Primary section, and both Primary and Secondary Schools were run by the same management. On record, the respondent has not produced any letter of resignation. He lastly contended that the respondent has not disputed that invalid pension could have been sanctioned to the petitioner because of his physical inability but it was not sanctioned for the reason that he has submitted certificate of private doctor and not of a Civil Surgeon.

7. On the other hand, the learned counsel for the respondent contended that the invalid pension has rightly not been sanctioned as medical certificate of Civil Surgeon was not produced. It is true that the petitioner has to his credit qualified service of more than 30 years, but the claim for voluntary retirement was not applicable at the relevant time to the non Government Secondary School staff and as such that benefit could not be given. The learned counsel for the respondent very fairly conceded that resignation letter of the petitioner has not been produced on record of this case.

8. I have given my thoughtful considerations to the contentions of the learned counsel for the parties.

9. It is not in dispute that provisional pension has been sanctioned to the petitioner but later on, on technical point that he was not having to his credit at the relevant time, qualified services of 30 years, the said amount was sought to be recovered and the adhoc pension was discontinued. In the year 1975 when the pension papers of the petitioner were submitted to the Department for sanctioning them, the services rendered by the petitioner in the School run by the District Local Board, Bharuch were not countable towards qualifying services but in the year 1976 vide G.R. No.SSN 3474/1763 Act-G dt.28th June 1976, services rendered in the Primary School or District School or Municipal School Board were ordered to be counted for the purposes of pension. Earlier, the claim of the petitioner was rejected on the ground that he has not to his credit, 30 years' service and at that point of time that decision would have been correct, but after the aforesaid decision of the Government, the services rendered by the petitioner in the Primary School run by the District Local Board, was countable for qualifying services. There is no dispute that the petitioner has rendered more than 5 years' service in the Primary School run by the District Board. It is also not in dispute that this services were countable but the respondent instead of considering the matter of the petitioner in correct perspective, insisted not to give him any benefit. The approach of the respondent should have been fair and positive and should have been to provide substantial justice to the employee and not to act arbitrary or technically to deny pension to a teacher who rendered valuable services in the field of education. The defence which has been taken by the respondent is illusory. The case of the respondent that the petitioner has resigned from the service is difficult to believe as no document has been produced on record by

the respondent. In case after serving for more than 20 years in the Secondary section the petitioner has approached the management for shifting him to indoor duties due to his physical inability and when the management has shifted him to Primary School, it is difficult to believe that the petitioner has resigned from services. The Management could have continued the petitioner in the Secondary section also. There is no dispute on record that in addition to taking of physical training classes, the petitioner was also teaching Maths and English in the Secondary School. In view of this fact, there would not have been any difficulty for the Management to continue the petitioner in the indoor duties in the Secondary School but for the reasons best known to the Management, at that point of time, the petitioner has been posted in Primary section and his pay has also been reduced. The petitioner, at that point of time, was sufficiently a senior person and he would have compromised with the situation as otherwise it would have been very difficult for him to get any job. At that point of time, the services were not pensionable as it was subsequently introduced. Otherwise, the petitioner would have, at the cost of his health, continued in the Secondary section. The respondent should have made an objective approach considering the fact that the petitioner has reached sufficiently high age. The fact that the difficulties which the petitioner would have faced and the situation under which he would have compromised also cannot be ignored. It is true that at that time, the scheme for voluntary retirement may not be there and it was subsequently introduced, but admittedly the scheme for invalid pension was there. The respondent should have asked the petitioner to produce medical certificate from Civil Surgeon but that has also not been done and at this stage, they have come up with the case that on private doctor's certificate invalid pension cannot be sanctioned. So, the approach has been made by the respondent only to deny the valuable right of pension. The petitioner has retired in the year 1980 and for all these years, he would have suffered many difficulties in meeting day to day expenses of life. A person who rendered more than 40 years' service has been left to the mercy and pity of many of his relatives. The pension scheme has been introduced by the Government with the object and purpose that an employee after serving the Government or private institution may not face any financial difficulties in his old age.

10. Taking into consideration the totality of the facts of the case, this writ petition deserves acceptance. The petitioner had to his credit, on 31st

July 1970, qualified services of 30 years in the Secondary section of non Government School. The qualified services as per the respondent for pension purposes, was of 30 years, which condition he fulfills. Taking into consideration the facts that the petitioner had qualified services for pension, on 31st July 1970, no proof has been produced by the respondent that he resigned from the Secondary School, the petitioner would have been entitled for the invalid pension in case he would have produced medical certificate of Civil Surgeon, voluntary retirement scheme for members of staff of non Government School has been subsequently introduced and there was no break whatsoever in between the services rendered by the petitioner in Secondary and Primary School, it is hereby ordered that the respondents No.1 to 3 shall sanction the pension to the petitioner taking his services upto 31st July 1970 and on the basis of same the petitioner shall be entitled for other retiremantary benefits which would have been available to him as per relevant Resolution, Rules, and Circulars etc. of the Government. The determination of the amount of pension, gratuity and other retiremantary benefits payable to the petitioner should be made within a period of three months from the date of receipt of certified copy of this order. The amount so determined shall be paid to the petitioner within two months thereafter. Considering the fact that the pension scheme has been introduced and sanctioned for the members of the staff of the non Government Secondary School with effect from 1.3.69, and the petitioner was in the Secondary School on the relevant date, the petitioner shall also be entitled for the interest on the amount of arrears of pension and other retirementary benefits at the rate of 12% p.a. from the date of filing of this Special Civil Application, i.e from 5th September 1983. The respondent No.1 is also directed to pay Rs.1,000/- to the petitioner by way of cost of this petition. Rule is made absolute in aforesaid terms with no order as to costs.

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